Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1407

JAMES TRAINOR, et al.,

Appellants.

v.

JUAN HERNANDEZ, et al.

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

APPEAL DOCKETED APRIL 3, 1976

PROBABLE JURISDICTION NOTED JUNE 7, 1976

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INDEX

Item	Page
Chronological List of Relevant Docket Entries	2
Complaint with Exhibits, consisting of documents filed against Plaintiffs in the attachment proceeding in the state court, filed December 2, 1974	5
Attachment complaint	14
Affidavit for attachment	17
Writ of attachment	21
Plaintiffs' Motion for a Temporary Restraining Order, filed December 5, 1974	24
Affidavit in support of motion	24
Exhibits to Defendants' Memorandum Opposing Motion for a Temporary Restraining Order, filed December 12, 1974	26
Exhibit A: Illinois Revised Statutes, 1973, Ch. 23, Section 11-21 — Fraud	26
Exhibit B: Illinois Revised Statutes, 1973, Ch. 11 — Attachments	28
Exhibit C: Affidavit concerning Plaintiffs' hospitalization benefits	50
Exhibit D: Affidavit concerning Plaintiffs' employment and salary	51
Exhibit E: Affidavit concerning Plaintiffs' credit union accounts	52
Exhibit F: Affidavit concerning Plaintiffs' welfare benefits	53
Defendants' Motion to Dismiss, filed March 3, 1975 ...	55
Plaintiffs' Motion for Summary Judgment, filed March 6, 1975	57
Plaintiffs' Affidavit, setting forth statistics on attachment proceedings filed in the state courts, filed March 6, 1975	58

ITEM	PAGE
Order allowing Defendants Finley and Elrod to adopt Motion to Dismiss, entered March 7, 1975	60
Order designating three-judge court, entered March 21, 1975	61
Order directing the parties to brief the issue of whether *Huffman* v. *Pursue, Ltd.*, requires the dismissal of this case, entered July 9, 1975	62
Order certifying suit as a plaintiff and defendant class action, entered October 31, 1975	63
Court's Judgment, entered December 15, 1975	65
Court's Memorandum Opinion, entered December 15, 1975	68
Order allowing Defendants Finley and Elrod to adopt pleadings of Defendants Trainor and O'Malley, entered January 30, 1976	78
Notice of Appeal of Defendants Trainor and O'Malley, filed February 3, 1976	79
Notice of Appeal of Defendants Finley and Elrod, filed February 10, 1976	80
Order denying Defendants' Motion for a Stay of Injunction, entered February 25, 1976	81
Order of the Supreme Court of the United States granting Appellees' Motion to Proceed *in forma pauperis* and noting probable jurisdiction, entered June 7, 1976	82
Plaintiffs' Motion to Dismiss the Appeal of Defendants Finley and Elrod, filed June 22, 1976	83
Order denying Plaintiffs' Motion to Dismiss the Appeal of Finley and Elrod, entered June 30, 1976	85

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

12/ 2/74 Filed complaint.

12/ 5/74 Filed motion for temporary restraining order.

12/ 5/74* Filed memorandum in opposition [to motion for a temporary restraining order].

3/ 3/75 Filed defendants Trainor's and O'Malley's motion to dismiss.

3/ 6/75 Filed plaintiffs' motion for summary judgment.

3/ 7/75 Enter order dated March 6, 1975: [O]rdered that State's Attorney is permitted to adopt motion to dismiss filed by Attorney General and further that Morgan Finley is substituted in place of Matthew Danaher.

3/21/75 Filed designation of three-judge court, consisting of the Honorable Wilbur F. Pell, Jr., the Honorable Joel M. Flaum and the Honorable Alfred Y. Kirkland.

7/ 9/75 Enter order dated July 8, 1975: The parties are directed to brief the issue of whether *Huffman* v. *Pursue, Ltd.*, —— U.S. ——, 95 S. Ct. 1200 (March 18, 1975), requires the above captioned cause to be dismissed.

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*Should be "12/12/74".

10/16/75 Enter order dated October 15, 1975: Arguments heard on behalf of and in opposition to, matters pending before three-judge court and ruling is taken under advisement.

11/ 3/75 Enter order dated October 31, 1975: It is hereby ordered, adjudged and decreed that this suit may be maintained as a plaintiff and defendant class action.

12/16/75 Enter order dated December 15, 1975: Enter order of three-judge court. In accordance with this court's memorandum opinion, the court enters judgment pursuant to Rule 58 of F.R.C.P.

12/16/75 Enter order dated December 15, 1975: Enter memorandum opinion of three-judge court.

1/21/76 Filed state defendants' [Trainor and O'Malley] amended motion for a stay of injunction pending appeal.

1/30/76 Filed defendants' [Finley and Elrod] motion to stay injunction pending appeal.

2/ 2/76 Enter order dated January 30, 1976: Motion of defendants Finley and Elrod to adopt pleadings and memoranda filed and to be filed by the state defendants is granted.

2/ 3/76 Filed notice of appeal to the Supreme Court of the United States on behalf of James Trainor and Vivian O'Malley.

2/10/76 Filed notice of appeal to the Supreme Court of the United States on behalf of defendants Morgan Finley and Richard J. Elrod.

2/26/76 Enter order dated February 25, 1976: Defendants' motion for a stay is denied.

6/15/76 Filed certified copy of order of Supreme Court noting probable jurisdiction in this case.

6/30/76** Enter order dated June 30, 1976: In view of the questionable jurisdictional basis for this motion and in view of the fact that the issue raised by this motion may properly be presented to the Supreme Court, this court declines to rule upon plaintiffs' motion to dismiss the county defendants' appeal.

**This item is not listed on the docket sheet contained in the original record, but is a part of the supplemental record.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed December 2, 1974

JUAN HERNANDEZ and MARIA HERNANDEZ, individually and on behalf of all other persons similarly situated,

Plaintiffs,

vs.

MATTHEW J. DANAHER, Clerk of the Circuit Court of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, RICH-J. ELROD, Sheriff of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, JAMES TRAINOR, Acting Director of the Illinois Department of Public Aid, individually and in his official capacity, and VIVIAN O'MALLEY, individually and as agent of the Illinois Department of Public Aid,

Defendants.

No. 74 C 3473

COMPLAINT

Preliminary Statement

1. Plaintiffs, individually and on behalf of all other persons similarly situated, seek to have this Court declare

invalid and enjoin the defendants and the defendant class from enforcing the Illinois Attachment Act, Ill. Rev. Stat. ch. 11, § 1 *et seq.* insofar as it permits and authorizes creditors to attach assets of alleged debtors upon mere conclusionary allegation of fraudulent conduct without judicial review and without affording the debtor notice or prior opportunity to be heard, on the ground that this procedure deprives the alleged debtor of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. Plaintiffs further seek damages for deprivation of their property pursuant to the Illinois Attachment Act.

JURISDICTION

2. The jurisdiction of this Court is invoked under 28 U.S.C. § 1343(3) and (4) and 42 U.S.C. § 1983. Declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 since plaintiffs seek an injunction to restrain state officers from the enforcement, operation and execution of statutes of statewide applicability on the ground that said statutes are contrary to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

PARTIES

4. Plaintiffs, JUAN and MARIA HERNANDEZ, are residents of Chicago, Illinois.

5. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The class is composed of all persons who have

had or may have their property attached without notice or hearing upon the creditor's mere allegation of fraudulent conduct pursuant to the Illinois Attachment Act. The class is so numerous that joinder of all members is impractible; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class, and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

6. Defendant MATTHEW J. DANAHER is the duly elected Clerk for the Circuit Court of Cook County, and, as such, is charged with issuing writs of attachment pursuant to the Illinois Attachment Act. Defendant DANAHER is sued individually and pursuant to Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure as a representative of all persons who are clerks of the circuit courts for the judicial circuits of Illinois. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the defenses of the representative parties are typical of the defenses of the class; the representative parties will fairly and adequately protect the interests of the class; and the prosecution of separate actions against the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

7. Defendant RICHARD J. ELROD is the duly elected sheriff of Cook County and, as such, is charged with the execution of writs including writs of attachment issued

pursuant to the Illinois Attachment Act. Defendant ELROD is sued individually and, pursuant to Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure as a representative of all county sheriffs of Illinois. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the defenses of the representative parties are typical of the defenses of the class; the representative parties will fairly and adequately protect the interests of the class; and the prosecution of separate actions against the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

8. Defendant JAMES TRAINOR is the Acting Director of the Illinois Department of Public Aid and is charged with the statewide administration of the Department of Public Aid, and, as such, authorizes the filing of writs of attachment pursuant to the Illinois Attachment Act.

9. Defendant VIVIAN O'MALLEY is the duly authorized agent and representative of the Illinois Department of Public Aid and, as such, applies for and obtains writs of attachment pursuant to the Illinois Attachment Act.

STATEMENT OF FACTS

10. On or about October 30, 1974, Defendant JAMES TRAINOR, by and through his agents pursuant to §§1 and 2 of the Illinois Attachment Act, caused a complaint and affidavit to be filed against the plaintiffs in the Circuit Court of Cook County. Said complaint and affidavit were sworn to and verified by Defendant VIVIAN O'MALLEY and set forth the unsupported allegation that Plaintiffs JUAN and MARIA HERNANDEZ "within two years prior to the filing of this affidavit fraudulently concealed or disposed of property so as to hinder or delay their creditors." (A copy of the complaint and affidavit is attached hereto as plaintiffs' ExhibitA)

11. Upon the filing of said complaint and affidavit Defendant DANAHER summarily issued a writ of attachment and summons pursuant to §§ 1, 2, and 6 of the Illinois Attachment Act directing the Sheriff of Cook County to attach funds in plaintiffs' accounts held by E. J. Brach and Sons, Inc. Credit Union (hereinafter "Credit Union"). (A copy of said Writ of Attachment and Summons is attached hereto as plaintiffs' Exhibit B)

12. On November 5, 1974, Defendant ELROD, by and through his agents, pursuant to §§ 8, 10, and 14 of the Illinois Attachment Act executed said writ of attachment by serving same on the Credit Union.

13. On November 8, 1974, plaintiffs were served with a copy of the complaint, affidavit and writ of attachment.

14. On November 11, 1974, Plaintiff JUAN HERNANDEZ attempted to withdraw funds from the above account in order to pay outstanding debts immediately due and payable. Plaintiff was then informed by an employee of the Credit Union that he could not withdraw his funds since they had been attached.

15. On November 18, 1974, the return date set forth in the writ of attachment and summons, Plaintiff JUAN HERNANDEZ and his attorney appeared with an affidavit and answer to the attachment and demanded an immediate hearing. They were informed that the matter was set for hearing on December 19, 1974. They were further informed that attachment cases are not heard until three or four weeks subsequent to the return date.

STATEMENT OF CLAIM

16. The Illinois Attachment Act, Ill. Rev. Stat., ch. 11, §1 *et seq.* is contrary to and violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution for the following reasons:

a) Said statutes authorize the taking of an alleged debtor's property without notice and an opportunity to be heard;

b) § 1, parts sixth through ninth, authorizes a creditor to obtain a writ of attachment upon any of the following allegations, without supporting facts or other evidence:

Where the debtor has within 2 years preceding the filing of the affidavit required, fraudulently conveyed or assigned his effects, or a part thereof, so as to hinder or delay his creditors.

Where the debtor has, within two years prior to the filing of such affidavit, fraudulently concealed or disposed of his property so as to hinder or delay his creditors.

Where the debtor is about fraudulently to conceal, assign, or otherwise dispose of his property or effects, so as to hinder or delay his creditors.

Where the debt sued for was fraudulently contracted on the part of the debtor: Provided, the statement of the debtor, his agent or attorney,

which constitute the fraud, shall have been reduced to writing, and his signature attached thereto, by himself, agent or attorney.

c) §§ 1 and 2 authorize a creditor to obtain a writ of attachment upon his *ex parte* application to the clerk of the circuit court and without judicial order or supervision;

d) §§ 1 and 2 authorize the issuance of a writ of attachment without prior notice and opportunity to be heard whether or not the creditor has a security interest in the property and whether or not the action sounds in contract or tort;

e) The statute fails to provide for an immediate post-attachment hearing and § 6 specifically permits the creditor to select a return date up to 60 days subsequent to issuance of the writ.

17. Defendants and members of defendant class separately and in concert have acted under color of Ill. Rev. Stat. ch. 11, § 1 *et seq.* to deprive plaintiffs, and members of the plaintiffs' class, of rights secured under the Constitution of the United States in that plaintiffs and members of the plaintiffs' class have been deprived of their property without due process of law in violation of the Fourteenth Amendment to the United States Constitution and Title 42, U.S.C. § 1983.

18. As a direct and proximate result of defendants' wrongful actions, plaintiffs have been damaged in the amount of $10,000.

19. Plaintiffs and the class they represent have no adequate remedy at law and have suffered and continue to suffer irreparable injury as a result of the application of the statutory provisions herein challenged.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, individually and on behalf of all others similarly situated, pray that this Court grant the following relief:

A. Convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 to determine this action.

B. Order that this action be maintained as a class action as to both the plaintiff class and the defendant classes pursuant to Rule 23 of the Federal Rules of Civil Procedure.

C. Declare that Ill. Rev. Stat., ch. 11, §§ 1, 2, 2a, 6, 8, 10, and 14 are invalid and unconstitutional on their face and as applied for the reason that they violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

D. Enter a temporary restraining order and preliminary and permanent injunctions enjoining defendants from refusing to dismiss the writ of attachment against the plaintiffs' property.

E. Enter a temporary restraining order and preliminary and permanent injunctions mandating the defendants to return plaintiffs' property attached pursuant to the writ of attachment.

F. Enter preliminary and permanent injunctions enjoining Defendant MATTHEW J. DANAHER and all other clerks for the judicial circuits of Illinois, their successors, agents and employees, from issuing writs of attachment upon a creditor's affidavit of fraud pursuant to Ill. Rev. Stat. ch. 11, § 1, parts sixth through ninth.

G. Enter preliminary and permanent injunctions enjoining Defendant RICHARD J. ELROD and all other county sheriffs of the State of Illinois, their successors,

agents and employees, from executing writs of attachment issued upon a creditor's affidavit of fraud pursuant to Ill. Rev. Stat. ch. 11, § 1, parts sixth through ninth.

H. Enter preliminary and permanent injunctions enjoining Defendants JAMES TRAINOR and VIVIAN O'MALLEY from authorizing and processing applications for writs of attachments pursuant to Ill. Rev. Stat. ch. 11, § 1, parts sixth through ninth.

I. Enter judgment for the Plaintiffs JUAN and MARIA HERNANDEZ and against each of the defendants in the amount of $10,000 plus the costs of this action.

J. Award the plaintiffs reasonable attorneys' fees.

K. Grant such other relief as this court may deem appropriate and just.

/s/ Fred L. Lieb

/s/ Alan Dockterman

[Names and addresses of counsel omitted in printing.]

PLAINTIFFS' EXHIBIT "A" TO THE COMPLAINT*

Attachment Complaint

In the Circuit Court of Cook County, Illinois
Municipal Department, First District

People of the State of Illinois ex rel. Illinois Department of Public Aid

Plaintiff,

v.

Juan Hernandez and Maria Hernandez,

Defendants.

E. J. Brach and Sons Inc. Credit Union,

Attachment Debtor.

No. 74M1-576
Amount claimed
$3,720.20
Return date
November 18, 1974

---

*Plaintiffs' exhibits "A" and "B" (pages 14-23 of this appendix) consist of the attachment complaint, affidavit of attachment, and writ of attachment, which are a part of the record of the attachment suit brought against plaintiffs in the state court. These three documents were prepared on printed forms, supplied by the Clerk of the Circuit Court of Cook County, Illinois.

COMPLAINT

The plaintiff claims as follows:

1. That the defendants Juan Hernandez and Maria Hernandez within two years preceeding the filing of this affidavit fraudulently concealed from Cook County Department of Public Aid, agent of the plaintiff herein, personal property in the form of monies on deposit, to their credit, in the E. J. Brach and Sons Inc. Credit Union.

2. That as a result of such fraudulent concealment by the defendants herein, the plaintiff through its agent Cook County Department of Public Aid was obliged to and did provide public assistance to them, at their request, for the period April 17, 1972 through February 13, 1973 in the total sum of $3,720.20 to which they were not entitled.

3. That the defendants herein still have personal property in the form of monies on deposit to their credit in the E. J. Brach and Sons Inc. Credit Union to-wit: Juan Hernandez under Account No. 583056 with a current balance of approximately $593.31 and Maria Hernandez under Account No. 73787439 with a current balance of approximately $8.07.

Wherefore plaintiff prays for entry of a Judgment in the sum of $3,720.20 together with all costs herein and for such other and further relief as this Court may deem fit to grant.

.....
Attorney General
160 North LaSalle Street
793-2565

Attorney for plaintiff.

I, Vivian M. O'Malley, make oath and say that I am duly authorized agent of, the plaintiff in the above entitled action, have full knowledge of the facts relating to the above statement of claim and the facts therein alleged are true.

.....

Signed and sworn to before me,

.....

.....19....

Notary public

Affidavit for Attachment

In the Circuit Court of Cook County, Illinois
Municipal Department, First District

Vivian W. O'Malley, duly authorized representative of the plaintiff, being duly sworn, says: That there is due the plaintiff Illinois Department of Public Aid from the defendants Juan Hernandez and Maria Hernandez upon the claim set forth in the complaint hereto attached, after allowing the defendants all just credits, deductions and set-offs, the sum of $3,720.20

And affiant further says:

1. That the defendants Juan Hernandez and Maria Hernandez, residents of this State and their place of residence as follows: 854 N. Avers, Chicago, Illinois.

1(a) *The defendant .... not resident ..... of this State and upon diligent inquiry affiant has not been able to ascertain .... place ..... of residence.

1(b) The defendant ..... conceal .....sel ..... or stand ..... in defiance of ..... officer ..... so that process cannot be served upon .....

1(c) The defendant .... departed from this State with the intention of having .....effects removed from this State.

---

*Paragraphs 1(a) through 1(i) correspond to the nine grounds for attachment set out in Illinois Revised Statutes, chapter 11, section 1. Paragraph 1(g) reflects the basis for the attachment suit against the named plaintiffs, and thus, is the only paragraph where the blank spaces have been filled in.

1(d) The defendant .... about to depart from this State with the intention of having ..... effects removed from this State.

1(e) The defendant .... about to remove ..... property from this State with the intention of injurying the plaintiff .....

1(f) The defendant .... within two years preceding the filing of this affidavit fraudulently conveyed or assigned .... effects, or a part thereof, so as to delay or hinder ..... creditors.

1(g) The defendants Juan Hernandez and Maria Hernandez within two years preceding the filing of this affidavit fraudulently concealed or disposed of property so as to hinder or delay their creditors.

1(h) The defendant .... about fraudulently to conceal, assign or otherwise dispose of ..... property or effects so as to hinder or delay ..... creditors.

1(i) The debt sued for was fraudulently contracted on the part of the defendant ..... and statements of .... agent ..... or attorney, which constitute the fraud, have been reduced to writing and ..... signature ..... attached thereto, by ..... sell ..... agent ..... or attorney .....

2. The action herein does not sound in Tort.

3. The plaintiff claims $3,720.20 and a writ of attachment against the property of the defendants Juan Hernandez and Maria Hernandez which property is of the value of approximately $602.00 and no more, and is described as follows:

Account No. 583056 in the name of Juan Hernandez in the E. J. Brach & Sons Inc. Credit Union, and Account No. 73787439 in the name of Maria Hernandez in the E. J. Brach & Sons Inc. Credit Union; and any and all accounts in the E. J. Brach & Sons Inc. Credit Union in the name of Juan Hernandez and/or Maria Hernandez.

4. Affiant further says that he has just reason to believe that E. J. Brach and Sons Inc. Credit Union indebted to the defendants herein or have property, effects, chooses in action or credits in its possession or power, belonging to the defendants.

WHEREFORE, this affiant prays that said E. J. Brach and Sons Inc. Credit Union may be summoned as attachment debtor agreeably to law and may be required to file with the clerk of the court answers under oath to the interrogatories hereto attached.

The Clerk of the court is hereby requested to issue summons in the usual form requiring the appearance of the defendant and attachment debtor at or before 9:30 A.M., on November 18, 1974.

.....
Affiant

as duly authorized representative of
Illinois Department of Public Aid

Signed and sworn to before me,
....., 19...

.....
Notary public

Order Fixing Amount of Bond**

The Court orders that a writ herein should issue for damages in the amount of $.....

Dated ....., 19.....

.....
Judge

**FOR USE IN TORT ACTION, GARNISHMENT AND CASES WHERE SPECIFIC PROPERTY TO BE ATTACHED IS DESCRIBED, WHICH WOULD WARRANT A BOND IN AN AMOUNT OTHER THAN DOUBLE THE SUM SWORN TO BE DUE.

Important

THE BLANKS OF THE GROUNDS OF ATTACHMENT RELIED UPON MUST BE FILLED IN AND LINES DRAWN THROUGH THOSE NOT APPLICABLE.

[Interrogatories to attachment debtor omitted in printing.]

PLAINTIFFS' EXHIBIT "B" TO THE COMPLAINT

Writ of Attachment

In the Circuit Court of Cook County, Illinois
Municipal Department, First District

People of the State of Illinois ex rel. Illinois Department of Public Aid *Plaintiff,* *v.* Juan Hernandez and Maria Hernandez, *Defendants.* E. J. Brach and Sons Inc. Credit Union, *Attachment Debtor.*	No. 74M1-576 Amount claimed $3,720.20 Return date November 18, 1974

Writ of Attachment and Summons

THE PEOPLE OF THE STATE OF ILLINOIS to the Sheriff of Cook County.

WHEREAS Illinois Department of Public Aid by William J. Scott, Attorney General of State of Illinois, hath complained that Juan Hernandez and Maria Hernandez is [sic] justly indebted to the said Illinois Department of Public Aid in the amount of Three Thousand Seven Hundred & Twenty Dollars and .20/100 Cents and that the defendants Juan Hernandez and Maria Hernandez within two years preceding the filing of this affidavit in the above entitled

case, fraudulently concealed their property so as to hinder or delay their creditors and the said Illinois Department of Public Aid is a State agency and exempt of bond and security, according to law: WE THEREFORE COMMAND you that you attach so much of the estate, real or personal of the said defendants Juan Hernandez & Maria Hernandez as may be found in said city of Chicago, as shall be of value sufficient to satisfy the said claim and costs, according to the complaint and affidavit, but in case any specific property of the said defendants Juan Hernandez and Maria Hernandez found in your city, shall be described in this writ, then shall attach said described property only, and no other property, the said specified property to be so attached, being described as follows:

> Account No. 583056 in the name of Juan Hernandez in the E. J. Brach and Sons Inc. Credit Union, and Account No. 73787439 in the name of Maria Hernandez in the E. J. Brach and Sons Inc. Credit Union and any and all accounts in the E. J. Brach & Sons Inc. Credit Union in the name of Juan Hernandez and/or Maria Hernandez.

and such estate so attached in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon, according to law; and that you summon the said defendants Juan Hernandez and Maria Hernandez to either appear in person before said court in the above entitled action at Room No. 1308, Chicago Civic Center, Chicago, Illinois, at 9:30 A.M., on November 18, 1974, and file their appearance in writing with the clerk of the court or cause their appearance in writing by themselves or attorney to be entered in said action at or before that time in the office of the Clerk of the Court in Room 602, in said Chicago Civic Center, to answer to the complaint of the above named plaintiff, a copy of which

is hereto attached; and that you also summon E. J. Brach and Sons Inc. Credit Union a garnishees requiring them to file with the clerk of the court at Room 602, in said Chicago Civic Center at 9:30 A.M. on November 18, 1974, or before that time their answers in writing to the interrogatories, submitted.

William J. Scott, Attorney General
Attorney for plaintiff
160 North LaSalle Street
Chicago, Illinois 60601
793-3656

WITNESS .....19....

Oct. 30, 1974 Matthew J. Danaher
Clerk of Court

NOTICE

Proceedings in attachment are disposed of in Room 1308, Chicago Civic Center on return day unless otherwise ordered by the Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed December 5, 1974
[Caption omitted in printing]

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

NOW COME Plaintiffs JUAN and MARIA HERNANDEZ, by and with their attorneys, and respectfully move this Honorable Court for an order temporarily restraining the Defendants JAMES TRAINOR and VIVIAN O'MALLEY from refusing to release the writ of attachment on Account Number 583056 and Account Number 73787439 on deposit with E. G. Brach and Sons, Inc. Credit Union and for an order mandating Defendant RICHARD J. ELROD to release custody and control of said assets.

In support of their motion, plaintiffs submit the attached affidavit and a supporting memorandum of law.

/s/ Fred L. Lieb
One of Plaintiffs Attorneys

[Names and addresses of counsel omitted in printing]

STATE OF ILLINOIS }
COUNTY OF COOK } SS

AFFIDAVIT

1. I and my wife are the plaintiffs in the above-captioned cause.

2. We presently reside in Chicago, Illinois with our four minor children: ages 5, 6, 8 and 9.

3. I am employed at E. J. Brach and Sons as a laborer and am a member of the E. J. Brach and Sons Inc. Credit Union.

4. On November 8, 1974, I was served by a Deputy Sheriff of Cook County a copy of a complaint, affidavit and writ of attachment.

5. On November 11, 1974, I attempted to withdraw funds from my account with the credit union but was informed that I could not because the monies had been attached by the Department of Public Aid.

6. On November 18, 1974, I appeared with my attorney, Alan Dockterman, in the Circuit Court of Cook County, in room 1401 of the Civic Center. I and my attorney were ready to proceed with the hearing and to challenge the attachment at that time, but when we arrived we learned the case had already been continued to December 19, 1974.

7. I presently have no other savings and need the money in my account with the Credit Union to pay my rent which is due December 1, 1974, and to pay past due electricity, gas, and telephone bills. If I cannot obtain money to pay these bills, I fear that these services will be discontinued.

8. I am presently in need of surgery on my back but cannot leave my job to go into the hospital because I cannot use the money in my account with the Credit Union to support my family and pay my bills, while I am out of work.

9. My automobile is presently being repaired by Empire Motors because of a recent accident. I have been informed that the bill will be approximately $200.00.

/s/ Juan Hernandez

[Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed December 12, 1974

EXHIBITS TO DEFENDANTS' MEMORANDUM OPPOSING MOTION FOR A TEMPORARY RESTRAINING ORDER

EXHIBIT A

Illinois Revised Statutes, chapter 23—Charities and Public Welfare.

11—21. § 11—21. **Fraud—Penalty.**) Any person who by means of any false statement, wilful misrepresentation, or failure to notify the county department or the local governmental unit, as the case may be, of a change in his status as required by sections 11—18 and 11—19, for the purpose of preventing the denial, cancellation or suspension of his grant, or a variation in the amount thereof, or through other fraudulent device obtains or attempts to obtain, or aids or abets any person in obtaining financial aid under this Code to which he is not entitled, shall be guilty of a Class A misdemeanor.

If an applicant makes and subscribes an application form under Section 11—15 which contains a written declaration that it is made under penalties of perjury, knowing it to be false, incorrect or incomplete in respect to any material statement or representation bearing on his eligibility, income or resources, the offender shall be subject to the penalties for perjury as provided in Section 32—2 of the "Criminal Code of 1961", approved July 28, 1961, as amended.[1]

A person who receives financial aid for which he was not eligible as a result of his making any false statement, wilful misrepresentation, or failure to notify the county department or local governmental unit, as the case may be, of a change in his status as required by Sections 11—18 and 11—19, for the purpose of preventing the denial, cancellation or suspension of his grant, or a variation in the amount thereof, or by other fraudulent device, or a person who knowingly aids or abets any person in obtaining financial aid for which he is not eligible, shall be answerable to the county department or the local governmental unit, as the case may be, for refunding the entire amount of aid received. If the refund is not made, it shall be recoverable in a civil action from the person who received the aid, or from anyone who wilfully aided such person to obtain the aid. If fraud is proven in such action, the court may as a penalty assess an additional sum of money, up to but not in excess of the entire amount of aid provided, against the recipient or against any person who wilfully aided the recipient. If assessed, the penalty shall be included in any judgment entered for the aid received, and paid to the county department or the local governmental unit, as the case may be.

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1. Chapter 38, § 32—2.

EXHIBIT B TO DEFENDANTS' MEMORANDUM OPPOSING MOTION FOR A TEMPORARY RESTRAINING ORDER

Illinois Revised Statutes, chapter 11—Attachments:

AN ACT in regard to attachments. Approved December 23, 1871. Title as amended by act approved Aug. 24, 1965. L. 1965, p. 3323.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

1. Causes.] § 1. In any court having competent jurisdiction, a creditor having a money claim, whether liquidated or unliquidated, and whether sounding in contract or tort, may have an attachment against the property of his debtor, or that of any one or more of several debtors, either at the time of instituting suit or thereafter, when the claim exceeds $20, in any one of the following cases:

First: Where the debtor is not a resident of this State.

Second: When the debtor conceals himself or stands in defiance of an officer, so that process cannot be served upon him.

Third: Where the debtor has departed from this State with the intention of having his effects removed from this State.

Fourth: Where the debtor is about to depart from this State with the intention of having his effects removed from this State.

Fifth: Where the debtor is about to remove his property from this State to the injury of such creditor.

Sixth: Where the debtor has within 2 years preceding the filing of the affidavit required, fraudulently conveyed or assigned his effects, or a part thereof, so as to hinder or delay his creditors.

Seventh: Where the debtor has, within 2 years prior to the filing of such affidavit, fraudulently concealed or disposed of his property so as to hinder or delay his creditors.

Eighth: Where the debtor is about fraudulently to conceal, assign, or otherwise dispose of his property or effects, so as to hinder or delay his creditors.

Ninth: Where the debt sued for was fraudulently contracted on the part of the debtor: Provided, the statements of the debtor, his agent or attorney, which constitute the fraud, shall have been reduced to writing, and his signature attached thereto, by himself, agent or attorney.

1a. Venue.] § 1a. The venue provisions applicable to other civil cases shall apply to attachment proceedings; and in addition thereto, attachment proceedings may be brought in the County where property or credits of the debtor are found.

2. Affidavit — Statement — Examination under oath.] § 2. To entitle a creditor to such a writ of attachment, he or his agent or attorney shall make and file with the clerk of the circuit court, an affidavit setting forth the nature and amount of the claim, so far as practicable, after allowing all just credits and set-offs, and any one or more of the causes mentioned in section 1, and also stating the place of residence of the defendants, if known, and if not known, that upon diligent inquiry the affiant has not been able to ascertain the same together with a written statement, either embodied in such affidavit or separately in writing, executed by the attorney or attorneys representing the creditor, to the effect that the attachment action invoked by such affidavit does or does not sound in tort, also a designation of the return day for the summons to be issued in said action. In all actions

sounding in tort, before the writ of attachment shall be issued, the plaintiff, his agent or attorney, shall apply to a judge of the circuit court of the county in which the suit is to be brought or is pending and be examined, under oath, by such judge concerning the cause of action; and, thereupon, such judge shall indorse upon the affidavit the amount of damages for which the writ shall issue, and no greater amount shall be claimed.

2a. Form of affidavit.] § 2a. Affidavits for attachment before courts may be substantially in the following form:

STATE OF ILLINOIS,)
) ss.
..... County)

A B, being duly sworn, says: That (here state if affiant is agent or attorney of the creditor; if suit is by an individual or corporation, the name of such individual or corporation, and if the suit is by a firm, the name of the partners) has a just demand against (name of debtor), on account of (here make short statement of the nature and amount of the claim), and the affiant believes (the name of the creditor) is entitled to recover of said (name of debtor), after allowing all just credits and set-offs ..... dollars and ..... cents, which is now due, and that he has good reason to believe and does believe that (name of debtor) (here state some one or more of the causes which authorize an attachment) the said (name of debtor) (here state the residence of the debtor if known, or if not, that the affiant has made diligent inquiry and cannot ascertain his place of residence.)

.....

Subscribed and sworn to before me on this ..... day of ....., ..., A.D.

.....

My commission expires ....., ..., A. D.

(If action sounds in tort here include the endorsement of judge as to amount of damages for which writ shall issue.)

3. Names, etc., heirs, etc.] § 3. It shall be sufficient, in all cases of attachment, to designate defendants by their reputed names, by surnames, and joint defendants by their separate or partnership names, or by such names, styles or titles as they are usually known; and heirs, executors and administrators of deceased defendants shall be subject to the provisions of this act, in all cases in which it may be applicable to them.

4. § 4. Repealed.

4a. Bond — State and its departments and officers exempt.] § 4a. Before granting an attachment, as aforesaid, the clerk shall take bond and sufficient security, payable to the People of the State of Illinois, for the use of the person or persons interested in the property attached, in double the sum sworn to be due, conditioned for satisfying all costs which may be awarded to such defendant, or to any others interested in said proceedings, and all damages and costs which shall be recovered against the plaintiff, for wrongfully suing out such attachment — which bond, with affidavit of the party complaining, or his agent or attorney, shall be filed in the office of the clerk granting the attachment. Every attachment issued without a bond and affidavit taken, is hereby declared illegal and void, and shall be dismissed: Provided, however, that

nothing herein contained shall be construed to require the State of Illinois, or any Department of Government thereof, or any State officer, to file a bond as plaintiff in any proceeding instituted under this Act.

4b. Court may fix bond in double value of property to be attached.] § 4b. The court, or a judge thereof, upon ex parte motion, without notice, supported by affidavit of the plaintiff, his agent or attorney, substantially describing the property to be attached, and the value thereof, may, if satisfied of the bona fides of the application and sufficiency of the bond under the circumstances of the case, including proposed garnishments, fix the amount of the bond in double the value of the property to be attached, instead of double the sum sworn to be due, and in such event the writ shall direct the officer to attach said specifically described property, but the value of said property to be attached shall not be in excess of an amount sufficient to satisfy the debt claimed and costs. The court may require that said affidavit be supplemented by additional showing, by appraisal or otherwise, as to the value of said property, and may, upon motion of any party to the action claiming an interest in said property, either before or after actual attachment, require additional security, or order release of the attachment to the extent not covered by adequate double security.

5. Condition of bond.] § 5. The condition of the bond required in the preceding section shall be applicable to alias and pluries writs as well as original writs and shall be substantially in the following form:

The condition of this obligation is such, that whereas the above bounden ..... hath, on the day of the date hereof, prayed an attachment out of the ..... Court of said County, at the suit of .....

against the estate of the above named ..... Now, if the said ..... shall prosecute his suit with effect, or in the case of failure therein shall well and truly satisfy all costs which may be awarded to said ..... or to any person or persons interested in the property attached, and all damages and costs which shall be recovered against the plaintiff for wrongfully suing out the said writ of attachment, or alias or pluries writ or writs of attachment, then the above obligation to be void; otherwise to remain in full force and effect.

Additional bonds shall not be required for the issuance of alias and pluries writs, except as provided in Section 10a of this Act.

6. Writ — Form.] § 6. The writ of attachment required in the preceding section shall be directed to the sheriff (and, for purpose only of service of summons, to any person authorized to serve writs of summons), or in case the sheriff is interested, or otherwise disqualified or prevented from acting, to the coroner of the county in which the suit is commenced, and shall be made returnable on a return day designated by the plaintiff, which day shall not be less than ten days or more than sixty days after its date. Such writ shall be substantially in the following form:

The People of the State of Illinois to the Sheriff of ..... County: or for the purpose only of service as summons; to any person authorized to serve writs of summons: — Greeting:

Whereas A B (or agent or attorney of A B, as the case may be), hath complained that C D is justly indebted to the said A B to the amount of ..... and that (here state the cause set out in the affidavit) and the said ..... having given bond and security, according to law: We therefore command you that you attach so

much of the estate, real or personal, of the said C D, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the affidavit, but in case any specific property of the said C D, found in your county shall be described in this writ, then you shall attach said described property only, and no other property, the said specified property to be so attached, being described as follows:

.....

.....

and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law; and that you summon C D to appear and answer the complant of said A B, before the ....Court of ..... at ..... in the county of ..... on the ..... day of ..... next; and that you also summon ..... and such other persons as you shall be required by the said A B, as garnishees, to be and appear before the said court on the said ....., day of ..... next, then and there to answer to what may be objected against them. When and where you shall make known to the said court how you have executed this writ, and have you then and there this writ.

Witness ..... clerk of the said court, this ..... day of ..... in the year of our Lord, etc.

Which writ of attachment shall be signed by the clerk, and the seal of the court shall be affixed thereto.

7. Attachment against a joint debtor.] § 7. In all cases where two or more persons are jointly indebted, either as partners or otherwise, and an affidavit shall be filed as provided in the first section of this act, so as to bring one or more of such joint debtors within its provisions,

and amenable to the process of attachment, then the writ of attachment shall issue against the property and the effects of such as are so brought within the provisions of this act; and the officer shall be also directed in said writ to summon, all defendants to the action, whether the attachment is against them or not, to answer to the said action, as in other cases of joint defendants.

8. Execution of writ.] § 8. Such officer shall without delay execute such writ of attachment upon the property described in the writ, or in the absence of such description, upon the lands, tenements, goods, chattels, rights, credits, moneys and effects of the debtor, or upon any lands and tenements in and to which such debtor has or may claim any equitable interest or title, of sufficient value to satisfy the claim sworn to, with costs of suit as commanded in such writ.

Except as provided in Section 11 of this act, the writ of attachment may be levied only in the county to which the writ is issued, and by a proper officer of said county.

9. Certificate of levy—Effect.] § 9. When a writ of attachment is levied upon any real estate, in any case, it shall be the duty of the officer making the levy to file a certificate of such fact with the recorder of the county where such land is situated; and from and after the filing of the same, such levy shall take effect, as to creditors and *bona fide* purchasers, without notice, and not before.

10. Serving defendant — Return.] § 10. The officer shall also serve said writ upon the defendant therein, if he can be found, in like manner as provided for service of summons in other civil cases. The return of such writ shall state the particular manner in which the same was served. If the writ is served upon the defendant less than ten days before the return day thereof, he shall not be compelled to

appear or plead until fifteen days after the return day designated in the writ. The writ of attachment may be served as a summons upon defendants wherever they may be found in the State, by any person authorized to serve writs in like manner as summons in other civil cases.

10a. Alias and pluries writs.] § 10a. (1) When it appears by the return of the officer that the defendant or property of the defendant is not found, or that a garnishee designated by the writ has not been served, alias or pluries writs may issue on the application of the plaintiff.

(2) Alias or pluries writs may also issue on the application of the plaintiff where the property attached on any original alias or pluries writ, or the property found to be in the hands of the garnishee or garnishees, is not of a value sufficient to satisfy the claim sworn to, with costs of suit. The provisions of this sub-section shall not be applicable to cases in which the original writ describes specific property to be attached.

(3) When the attachment writ is directed against specific property of the defendant and only a portion of the property described is attached, or the property found to be in the hands of the garnishee or garnishees, is not of a value sufficient to satisfy the claim sworn to, with costs of suit, alias or pluries writs directed against the remainder of the property described, may issue upon the application of the plaintiff. Alias or pluries writs may also issue where additional specific property is desired to be attached, but before such writ or writs shall issue the plaintiff shall furnish an additional bond in accordance with Section 4b of this Act, in double the value of the additional specific property. Where a writ of attachment covering specific property has been issued, alias or pluries writs may issue on application of the plaintiff directing the sheriff to attach sufficient property of the defendant, which, together with the specific property already attached, if any, will equal the amount of the plaintiff's claim, and before such alias or pluries writ or writs shall issue the plaintiff shall furnish in accordance with Section 4a of this Act an additional bond in amount double the value of the additional property to be attached.

(4) Any alias or pluries writ shall be executed, the defendant shall be served, if he can be found, and return shall be made, and the same proceedings shall be had, as though such alias or pluries writ was original writ.

11. Pursuit of property.] § 11. If the defendant, or any person for him, shall be in the act of removing any personal property, the officer may pursue and take the same in any county in this state, and return the same to the county from which such attachment issued.

12. Writ issued and served on Sunday.] § 12. If it shall appear, by the affidavit, that a debtor is actually absconding, or concealed, or stands in defiance of an officer duly authorized to arrest him on civil process, as aforesaid, or has departed this state with the intention of having his effects and personal estate removed out of the state, or intends to depart with such intention, it shall be lawful for the clerk to issue, and sheriff or other officer to serve, an attachment against such debtor, on a Sunday as on any other day.

13. Writs to other counties.] § 13. The creditor may, at the same time, or at any time before judgment, cause an attachment writ to be issued to any other county in the State where the debtor may have property liable to be attached, which shall be levied as other attachment writs.

14. Possession — Forthcoming bond.] § 14. The officer serving the writ shall take and retain the custody and possession of the property attached, to answer and abide by the judgment of the court, unless the person in whose possession the same is found shall enter into bond and security to the officer, to be approved by him, in double the value of the property so attached with condition that the said estate and property shall be forthcoming to answer the judgment of the court in said suit. The sheriff, or other officer shall return such bond to the court in which the suit is brought, on the day to which such attachment is returnable.

15. Bond or recognizance to pay judgment.] § 15. Any defendant in attachment, desiring the return of property attached, may, at his option, instead of or in substitution for the bond required in the preceding section, give like bond and security, in a sum sufficient to cover the debt and damages sworn to in behalf of the plaintiff, with all interest, damages and costs of suit, conditioned that the defendant will pay the plaintiff the amount of the judgment and costs which may be rendered against him in that suit, on a final trial, within ninety days after such judgment shall be rendered or a recognizance, in substance as aforesaid, may be taken in open court, and entered of record, in which case the court shall approve of the security and the recognizance made to the plaintiff, and upon a forfeiture of such recognizance judgment may be rendered and execution issued as in other cases of recognizance. In either case, the attachment shall be dissolved, and the property taken restored, and all previous proceedings, either against the sheriff or against the garnishees, set aside, and the cause shall proceed as if the defendant had been seasonally served with a writ of summons.

16. Neglect of officer to take bond—Proceedings.]§ 16. If the sheriff shall fail to return a bond taken by virtue of the provisions of this Act, or shall have neglected to take one when he ought to have done so, in any attachment issued under any provisions of this Act, the plaintiff in the attachment may cause a rule to be entered at any time during the first ten days after the day on which the writ is returnable requiring the said sheriff to return the said bond; or in case no bond has been taken, to show cause why such bond was not taken. If the said sheriff shall not return the said bond within one day thereafter, or show legal and sufficient cause why the said bond has not been taken, judgment shall be entered up against him for the amount of the plaintiff's demand, with costs of suit. Execution may thereupon issue for the same, whenever judgment shall have been entered against the defendant in the attachment.

17. Neglect to return sufficient bond—Proceedings.] § 17. The plaintiff may, within thirty days after the return of such bond, except to the sufficiency thereof, reasonable notice of such exception having been given to the sheriff or other officer who took the same, and if, upon hearing, the court shall adjudge such security insufficient, such sheriff shall be subject to the same judgment and recovery and have the same liberty of defense as if he had been made defendant in the attachment, unless good and sufficient security shall be given within such time as may be directed by the court, and execution may issue thereupon as in other cases of judgment. And whenever the judgment of the plaintiff, or any part thereof shall be paid or satisfied by any such sheriff, he shall have the same remedy against the defendant for the amount so paid by him as is now provided by law for bail against their principal, where a judgment is paid or satisfied by them.

18. Suit on bond.] § 18. If the plaintiff shall not except to the bond taken by the sheriff as aforesaid, or the exceptions are not sustained, and such bond shall be forfeited the plaintiff in the attachment may bring suit thereon in his own name, the same as if such bond had been assigned to him, and judgment shall be given for the plaintiff against the obligors in the bond for the value of the property, or if the property is greater than the amount due upon the execution, then for the amount due and costs of suit.

19. Sustenance of live stock — Compensation.] § 19. When any sheriff or other officer shall serve an attachment on horses, cattle or live stock, and the same shall not be immediately replevied or restored to the debtor, such officer shall provide sufficient sustenance for the support of such live stock until the same shall be sold or discharged from such attachment. He shall receive therefor a reasonable compensation, to be ascertained and determined by the court out of which the attachment issued, and charged in the fee bill of such officer, and shall be collectible as part of the costs.

20. Perishable property.] § 20. When any goods and chattels are levied on by virtue of any attachment, and the sheriff or other officer having custody of such goods and chattels is of the opinion that they are of a perishable nature and in danger of immediate waste or decay, such sheriff or other officer shall demand that the plaintiff in such attachment obtain from the court out of which the attachment issued an order permitting such property to be sold not later than 24 hours after the levy has been made, upon due notice of sale to the defendant and to the public as the court in its order shall require. The money arising from such sale shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court to which the process is returnable.

If the plaintiff in the attachment fails or refuses to obtain such an order for sale of perishable property, the sheriff or other officer making the levy shall be absolved of all responsibility to any person for loss occasioned by the failure to sell or care for such perishable property. The demand of the sheriff or other officer shall be written and shall be delivered to the plaintiff or his attorney or agent, and to the defendant if found. If defendant is not found, a copy of the demand shall be posted on the premises where the perishable items are located. Plaintiff's motion for an order of sale of perishable property shall be treated as an emergency motion.

21. Garnishment.] § 21. The sheriff or any other person authorized to serve writs of summons shall, in like manner as writs of summons are served in ordinary civil cases, summon, wherever they may be found in the State, the persons mentioned in such attachment writ as garnishees and all other persons whom the creditor shall designate as having any property, effects, choses in action or credits in their possession or power, belonging to the defendant, or who are in anywise indebted to such defendant, the same as if their names had been inserted in such writ. The persons so summoned shall be considered as garnishees. The return shall state the names of all persons so summoned, and the date of such service on each.

Persons summoned as garnishees shall thereafter hold any property, effects, choses in action or credits in their possession or power belonging to the defendant which are not exempt, subject to the court's order in such proceeding, and shall not pay to the defendant any indebtedness owed to him subject to such order, and such property, effects, choses in action, credits and debts shall be considered to have been attached and the plaintiff's claim to

have become a lien thereon pending such suit. A security which is transferable as provided in Section 8-320 of the Uniform Commercial Code[1] is, for purposes of this Act, only in the possession or power of the person which carries on its books an account in the name of the defendant in which is reflected an interest in such security, or, if such security has been pledged by the defendant, the pledgee of the defendant.

22. Notice by publication and mail.] § 22. When it shall appear by the affidavit filed or by the return of the officer, that a defendant in any attachment suit is not a resident of this State, or the defendant has departed from this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him, and that property of the defendant has been attached, or that persons having such property or effects, choses in action or credits belonging to defendant, or owing debts to him, have been summoned as garnishees, it shall be the duty of the clerk of the court in which the suit is pending to give notice, by publication at least once in each week for three weeks successively, in some newspaper published in this State, most convenient to the place where the court is held, of such attachment or garnishment, and at whose suit, against whose estate, for what sum, and before what court the same is pending, and that unless the defendant shall appear, give bail, and plead within the time limited for his appearance in such case, judgment will be entered, and the estate so attached or garnisheed sold or otherwise disposed of as provided by law. And such clerk shall, within ten days after the first publication of such notice, send a copy

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[1]Chapter 26, § 8-320.

thereof by mail, addressed to such defendant, if the place of residence is stated in such affidavit; and the certificate of the clerk that he has sent such notice in pursuance of this section, shall be evidence of that fact.

23. Default.] § 23. No default or proceeding shall be taken against any defendant not served with summons within the State and not appearing, unless the first publication or personal service outside of the State be at least thirty days prior to the day at which such default or proceeding is proposed to be taken.

24. Continuance for want of publication or service.] § 24. If for want of due publication or service the cause shall be continued, the same proceedings shall be had at a subsequent return day to be fixed by the court, as might have been had at the return day at which the writ is returnable.

25. Filing of complaint — Answer or appearance — Time.] § 25. The complaint shall be filed ten days before the return day of the attachment, and if so filed the defendant, subject to the provisions of Section 10 of this Act, shall file his answer or otherwise make his appearance on or before said day. If the complaint is not so filed the defendant shall not be compelled to appear or answer until fifteen days after the return day designated in the writ and if the complaint is not filed five days after the return day designated in the writ the defendant may, in the discretion of the court have the suit dismissed.

26. Civil Practice Act — Application.] § 26. The provisions of the Civil Practice Act, including the provisions for appeal, and all existing and future amendments of said Act and modifications thereof, and the rules now or hereafter adopted pursuant to said Act, shall apply to all proceedings hereunder, except as otherwise provided in this Act.

27. Pleadings.] § 27. The defendant may answer, traversing the facts stated in the affidavit upon which the attachment issued, which answer shall be verified by affidavit; and if, upon the trial thereon, the issue shall be found for the plaintiff, the defendant may answer the complaint or file a motion directed thereto as in other cases, but if found for the defendant, the attachment shall be quashed, and the costs of the attachment shall be adjudged against the plaintiff, but the suit shall proceed to final judgment as though commenced by summons.

28. Amendments.] § 28. No writ of attachment shall be quashed, nor the property taken thereon restored, nor any garnishee discharged, nor any bond by him given canceled, nor any rule entered against the sheriff discharged, on account of any insufficiency of the original affidavit, writ of attachment or attachment bond, if the plaintiff, or some credible person for him, shall cause a legal and sufficient affidavit or attachment bond to be filed, or the writ to be amended, in such time and manner as the court shall direct; and in that event the cause shall proceed as if such proceedings had originally been sufficient.

29. Interpleading.] § 29. In all cases of attachment, any person, other than the defendant, claiming the property attached, or garnisheed may intervene, verifying his petition by affidavit, without giving bond, but such property shall not thereby be replevied; and the court shall immediately (unless good cause be shown by either party for a continuance) direct a jury to be impaneled to inquire into the right of the property. In all cases where the jury finds for the claimant, and that such claimant is also entitled to the possession of all or any part of such property, the court shall enter judgment for such claimant accordingly and order the property attached or garnisheed to which such claimant is entitled to be delivered to such claimant, and the payment of his costs in such action. In cases where the jury finds for a claimant but further find that such claimant is not then entitled to the possession of any such property such claimant shall be entitled to his costs; and where the jury find for the plaintiff in the attachment, such plaintiff shall recover his cost against such claimant. If such claimant is a non-resident of the State he shall file security for costs as in case of non-resident plaintiff.

30. Counterclaim.] § 30. Any defendant against whom an attachment may be sued out under this Act, may avail himself in his defense of any counter-claim properly pleadable by the laws of this State.

31. § 31. Repealed.

31a. Change of parties—Other amendments.] § 31a. The provisions in regard to joinder, nonjoinder or misjoinder of parties applicable to other civil cases, shall be applicable to attachment proceedings; and when any action has been commenced in the name of the wrong party as plaintiff, the court, if satisfied that it has been so commenced through mistake, and that it is necessary for the determination of the real matter in dispute so to do, may allow any other party or parties to be substituted.

No change of parties made, or any other amendment made by order of court, shall impair any previous attachment of the estate, or arrest of the body, of any defendant remaining in the action, nor impair any recognizance, bond or bail given by any party remaining either as against the defendant, defendants, his, its, or their sureties. No sureties shall be released by reason of any amendment made by order of court.

32. § 32. Repealed.

33. Proceedings in aid.] § 33. Upon the return of attachments issued in aid of actions pending, unless it shall appear that the defendant or defendants have been served with process in the original cause, notice of the pendency of the suit, and of the issue and levy of the attachment, shall be given as is required in cases of original attachment; and such notification shall be sufficient to entitle the plaintiff to judgment, and the right to proceed thereon against the property and estate attached, and against garnishees, in the same manner and with like effects as if the suit had been commenced by attachment.

34. Effect of judgment.] § 34. When the defendant has been served with the writ, or appears to the action, the judgment shall have the same force and effect as in suits commenced by summons; and execution may issue thereon, not only against the property attached, but the other property of the defendant.

35. Judgment by default — Special execution.] § 35. When the defendant shall be notified as aforesaid, but not served with process within the State, and shall not appear and answer the action, judgment by default may be entered, which may be proceeded upon to final judgment as in other cases of default, but in no case shall judgment be rendered against the defendant for a greater sum than appears, by the affidavit of the plaintiff, to have been due at the time of obtaining the attachment, with interest, damages and costs; and such judgment shall bind, and a special execution shall issue against the property, credits and effects attached, and no execution shall issue against any other property of the defendant; nor shall such judgment be any evidence of debt against the defendant in any subsequent suit.

36. Property levied upon.] § 36. The property attached may be levied upon by execution issued in the attachment suit, whether in the hands of the officer or secured by bond as provided in this act, and shall be sold as other property levied upon by execution.

37. Division of proceeds—Priority.] § 37. All judgments in attachments against the same defendant, returnable on the same day, and all judgments in suits by summons, capias or attachment against such defendant, recovered within thirty days from the day when the judgment in the first attachment upon which judgment shall be recovered is rendered, shall share pro rata, according to the amount of the several judgments, in the proceeds of the property attached, either in the hands of a garnishee or otherwise: Provided, when the property is attached while the defendant is removing the same or after the same has been removed from the county, and the same is overtaken and returned, or while the same is secreted by the defendant, or put out of his hands for the purpose of defrauding his creditors, the court may allow the creditor or creditors through whose diligence the same shall have been secured a priority over other attachments or judgment creditors.

38. Statement of participating judgments—Officer to divide proceeds.] § 38. Upon issuing execution against any property attached, the proceeds of which shall be required to be divided, the clerk shall, at the same time, make out and deliver to the sheriff or other officer to whom the execution is issued, a statement of all judgments, with the costs thereon, which shall be entitled to share in such proceeds, and when any judgment creditor shall have been allowed a priority over the other judgment creditors, the same shall be stated. Upon the receipt of such proceeds by the sheriff or other officer, he shall divide and pay over

the same to the several judgment creditors entitled to share in the same in the proportion they shall be entitled thereto.

39. Payment into court.] § 39. The court may, at any time before the proceeds of any attached property has been paid over to the judgment creditors, order the whole or any part thereof to be paid into court, and may make any and all such orders concerning the same as it shall deem just.

39a. Sale of live stock levied upon.] § 39a. When any live stock is levied upon in any attachment proceeding, the plaintiff may apply to any judge of the court in which the suit is pending for an order of sale thereof, and if it shall appear that the stock is fit for market, or that if not sold will depreciate in value, then the judge shall order a sale of the property on such terms as shall seem proper, and the proceeds shall be deposited with the clerk of the court in which the suit is pending until determined, and then be paid to the successful party in said suit.

40. Appeals.] § 40. The plaintiff or defendant in any attachment, person intervening, and the sheriff, or either of them, who may feel aggrieved by the final order or judgment of the court, may prosecute appeals as by law is provided in other civil cases.

41. Fraud.] § 41. This act shall be construed in all courts in the most liberal manner for the detection of fraud.

42. Repeal.] § 42. Chapter nine of the Revised Statutes of 1845, entitled "Attachments in Circuit Courts" (except so much thereof as pertains to proceedings against garnishees, not herein re-enacted), and also the several acts amendatory of said chapter, approved respectively February 17, 1851, and February 22, 1861, February 13, 1865, and March 31, 1869, and all acts and parts of acts inconsistent or in conflict with this act, are hereby repealed. This section shall not be construed to affect any suits pending or rights existing under said acts at the time this act shall take effect.

43. Repealed.

44. Amendments of pleadings. § 44. Where relief is sought under this Act and the Court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitle him to relief but that he has sought the wrong remedy, the Court shall permit the pleadings to be amended, on just and reasonable terms, and the Court shall grant the relief to which plaintiff is entitled on the amended pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the Court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counter-claim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.

EXHIBIT C TO DEFENDANTS' MEMORANDUM OPPOSING MOTION FOR A TEMPORARY RESTRAINING ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

[Caption omitted in printing]

AFFIDAVIT

I, FESTEEN ANDERSON, being duly sworn, and on oath do state that:

1. I am an employee of E. J. Brach and Sons, Inc., 4656 West Kinzie Street, Chicago, Illinois, and hold the position of Manager of the Insurance Department.

2. In said position, I am responsible for the records of insurance coverage of employees of the Corporation.

3. JUAN HERNANDEZ is presently employed by E. J. Brach and Sons, Inc., and is insured by Metropolitan Life Insurance Company as provided in the attached Insurance Handbook, [omitted in printing] which includes in part:

(a) Hospitalization benefits
(b) Surgical benefits
(c) Major Medical benefits
(d) Out-patient and Maternity benefits

4. All employees of the Corporation are also eligible for sick pay benefits, after 12 months of continuous service.

5. Furthermore affiant sayeth not.

Festeen Anderson

[Jurat omitted in printing]

EXHIBIT D TO DEFENDANTS' MEMORANDUM OPPOSING MOTION FOR A TEMPORARY RESTRAINING ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

[Caption omitted in printing]

AFFIDAVIT

I, KATHERINE M. DUFFY, being duly sworn, and on oath do state:

1. I am an employee of E. J. Brach & Sons, Inc., 4656 West Kinzie Street, Chicago, Illinois, and hold the position of Administrative Assistant to Paymaster.

2. In said position, I am responsible for maintaining the payroll records of the Corporation.

3. JUAN HERNANDEZ is presently employed by this Corporation. His gross wages through November 23, 1974 were $9,676.04 (Nine Thousand, Six Hundred and Seventy-Six Dollars and Four Cents).

4. MARIA HERNANDEZ was employed by the Corporation through November 1, 1974, at which time she was laid off. Her gross earnings for the year were $6,043.77 (Six Thousand, Forty-Three Dollars and Seventy-Seven Cents).

5. Furthermore affiant sayeth not.

/s/ Katherine M. Duffy

[Jurat omitted in printing]

EXHIBIT E TO DEFENDANTS' MEMORANDUM OPPOSING MOTION FOR A TEMPORARY RESTRAINING ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

[Caption omitted in printing]

AFFIDAVIT

I, JOHN SCHMIDT, being duly sworn, and on oath do state that:

1. I am an employee of E. J. Brach & Sons, Inc., 4656 Kinzie Street, Chicago, Illinois and hold the position of Manager of the Brach Credit Union.

2. In said position, I am responsible for records of payroll deductions and deposits, and withdrawals of funds in the Brach Credit Union by employees of the Corporation.

3. JUAN HERNANDEZ has been and presently is an employee of E. J. Brach & Sons, Inc., and has Account No. 58305636 with the Credit Union. Said account has been open since January 3, 1972, and had a balance of $1,193.31 (One Thousand, One Hundred and Ninety-three Dollars and Thirty-one Cents) on November 30, 1974. See attached summary sheet of deposits, withdrawals and balances [omitted in printing].

4. MARIA HERNANDEZ has been an employee of E. J. Brach & Sons, Inc., and has Account No. 73787439 with the Credit Union. Said account has been open since August 21, 1972 and had a balance of $472.78 (Four Hundred and Seventy-two Dollars and Seventy-eight Cents) on November 30, 1974. See attached summary sheet of deposits, withdrawals and balances.

5. Furthermore affiant sayeth not.

/s/ John Schmidt

[Jurat omitted inprinting]

EXHIBIT F TO DEFENDANTS' MEMORANDUM OPPOSING MOTION FOR A TEMPORARY RESTRAINING ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

[Caption omitted in printing]

AFFIDAVIT

I, LIONEL BRAZEN, being duly sworn, and on oath do state that:

1. I am the Supervisor of the Excess Assistance service of the Illinois Department of Public Aid, and in said position am very familiar with the documents in the ordinary course of business which relate to public aid recipients who have received excess assistance; I have been employed in said position for over two and a half years.

2. JUAN HERNANDEZ applied for Aid to Families with Dependent Children—Unemployed (AFDC-U) assistance on March 24, 1972.

3. JUAN HERNANDEZ received said public assistance from April 17, 1972, through February 13, 1973.

4. JUAN HERNANDEZ received a total of $4,123.76 (FOUR THOUSAND, ONE HUNDRED TWENTY THREE DOLLARS AND SEVENTY SIX CENTS) in said public assistance from April 17, 1972 to February 13, 1973, as manifested by Forms DPA 52 and DPA 659 dated December 12, 1974 attached hereto as group Exhibit A [omitted in printing].

5. JUAN HERNANDEZ, as manifested by Exhibit B, attached [omitted in printing], a true and accurate copy of his Application for Assistance, a form kept in the normal

course of business, stated in his application for said assistance the following:

(a) that he was not employed
(b) that he had no current income
(c) that he had no personal property
(d) that he owned no real estate
(e) that he had no insurance

6. Furthermore affiant sayeth not.

/s/ Lionel Brazen

[Jurat omitted inprinting]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed March 3, 1975

[Caption omitted in printing]

DEFENDANTS' MOTION TO DISMISS

NOW COME Defendants, JAMES L. TRAINOR, acting Director of the Illinois Department of Public Aid, and VIVIAN O'MALLEY, Chief of the Bureau of Resources and Legal Services, Illinois Department of Public Aid, by and through their attorney, WILLIAM J. SCOTT, Attorney General, State of Illinois, pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, and moves this Court for an order dismissing the complaint and in support state as follows:

1. Insofar as the complaint seeks an award of damages against state public officials, it is a prohibited suit against the State of Illinois and barred by the 11th Amendment to the Constitution of the United States.

2. The complaint fails to state a claim for injunctive relief and/or declaratory relief.

a. The complaint fails to demonstrate any irreparable injury to Plaintiffs HERNANDEZ.

b. Plaintiffs have an adequate legal remedy under the laws of the State of Illinois, particularly, the laws and procedures available under the Civil Practice Act, Chapter 110, Ill. Rev. Stats., and the Attachment Act, Chapter 11, Ill. Rev. Stats.

c. As between a state agency charged with the responsibility to deter and rectify frauds against the State of Illinois, and, a former recipient of public aid charged with

defrauding the State of Illinois, the equities favor the state agency and not the person accused of fraud.

3. Illinois' Attachment statute meets the requirements of the Due Process Clause of the 14th Amendment of the United States Constitution as applied to this case involving a state agency.

a. All prejudgment deprivations of property are not violative of Due Process.

b. Prejudgment attachment without prior notice of the property of a person alleged to have violated both the Civil and Criminal Statutes of the State of Illinois is an extraordinary situation justifying the postponement of notice and an opportunity for á prior hearing.

c. The Illinois Attachment Act in conjunction with the Civil Practice Act provides an attachment debtor with a meaningful opportunity for an immediate post-seizure hearing.

d. Prejudgment attachment without an opportunity for a prior hearing by a judicial officer is justified under the Due Process Clause where the claim is based upon Quasi-Contract or restitution and where there is strong documentary evidence of fraudulent conduct.

WHEREFORE, Defendants respectfully request that this Court grant their motion to dismiss the complaint with prejudice and without costs and to enter judgment in their favor.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General
State of Illinois

[Names and addresses of counsel omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed March 6, 1975

[Caption omitted in printing]

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs move this Honorable Court to grant summary judgment in their favor in this cause, pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the grounds that there is no genuine issue as to any material fact and the plaintiffs are entitled to judgment in their favor as a matter of law.

/s/ Fred L. Lieb

[Names and addresses of counsel omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed March 6, 1975

[Caption omitted in printing]

AFFIDAVIT

I, JOHN CHAVEZ, being duly sworn on oath depose and state that:

1. I am employed as a full time legal para-professional by the Legal Assistance Foundation of Chicago, and, as such, have had numerous occasions to check court files to obtain information for the attorneys in our office.

2. I am enrolled as a student in the evening division at the DePaul University, College of Law.

3. Pursuant to a request by Fred Lieb and Alan Dockterman, attorneys for the plaintiffs in this case, I obtained the following information from the office of the Clerk of the Circuit Court of Cook County:

a. During 1974, there were ninety-six attachment cases filed in the Circuit Court of Cook County, Municipal Department, First District. I was able to locate the files for seventy-eight of these cases.

b. In forty of the seventy-eight cases the plaintiffs alleged fraudulent conduct on the part of the defendant as grounds for the attachment.

c. In seventeen of the seventy-eight cases the defendant filed an appearance; in thirteen of those cases the appearance was filed on the return date.

d. The average period of time elapsed in all seventy-eight cases from the date the writ of attachment was served until the return date of the writ was 18.2 days. The longest period of time was fifty-nine days.

e. In none of the cases was a hearing ever held on or before the return date.

f. In those thirteen cases where the defendant filed an appearance on the return date, the average period of time elapsed from the date the writ was served until the first scheduled trial date was thirty-nine days. The longest period of time was seventy days.

/s/ John Chavez

[Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption and portion of order

setting briefing schedule omitted]

ORDER ALLOWING DEFENDANTS FINLEY AND ELROD TO ADOPT MOTION TO DISMISS

[O]rdered that State's Attorney is permitted to adopt motion to dismiss filed by Atty. Gen. and further that Morgan Finley is substituted in place of Matthew Danaher.

/s/ Kirkland, J. Mar. 7, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing]

DESIGNATION OF THREE-JUDGE COURT

The undersigned Chief Judge of the Seventh Circuit having been notified by the Honorable Alfred Y. Kirkland, United States District Judge for the Northern District of Illinois, of the filing of the above-mentioned cause, does hereby pursuant to Title 28 U.S.C. §2284 designate the

HONORABLE WILBUR F. PELL, JR.

a United States Circuit Judge for the Seventh Judicial Circuit and the

HONORABLE JOEL M. FLAUM

a United States District Judge for the Northern District of Illinois, to serve with the

HONORABLE ALFRED Y. KIRKLAND

as members of a three-judge United States District Court to hear and determine the above-entitled action or proceeding.

Dated this twenty-first day of March, 1975

/s/ Thomas E. Fairchild
Chief Judge of the Seventh Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing]

ORDER FOR ADDITIONAL
BRIEFS ON COURT'S OWN MOTION

The parties are directed to brief the issue of whether *Huffman* v. *Pursue, Ltd.*, —— U.S. ——, 95 S. Ct. 1200 (March 18, 1975) requires the above captioned cause to be dismissed. Defendants shall have until July 29, 1975 to file the initial brief. Plaintiffs shall have until August 18, 1975 to respond. Defendants shall have until August 29, 1975 to reply. Page limitations in accordance with the local rules.

/s/ Kirkland, J. July 9, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing]

ORDER

This Court pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure has fully considered the plaintiffs' motion to certify this suit as a plaintiff and defendant class action, the memoranda in support thereof, defendants' response thereto, and the other documents filed in this matter, and finds as follows:

1. Plaintiffs are persons whose property was attached upon a creditor's allegation of fraudulent conduct pursuant to the Illinois Attachment Act, Ill. Rev. Stat. ch. 11, §1, parts sixth through ninth.

2. Plaintiffs represent the class of all persons who now have or may have their property attached upon a creditor's allegation of fraudulent conduct pursuant to the Illinois Attachment Act, Ill. Rev. Stat. ch. 11, §1, parts sixth through ninth.

3. The plaintiff class meets all the requirements of Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

4. Defendant Morgan M. Finley is the Clerk of the Circuit Court of Cook County.

5. Defendant Finley represents the class of all persons who are clerks of the circuit courts for the judicial circuits of Illinois.

6. Defendant Richard J. Elrod is the elected sheriff of Cook County.

7. Defendant Elrod represents the class of all persons who are county sheriffs of Illinois.

8. The defendant classes meet all the requirements of Rules 23(a) and 23(b)(1)(A) of the Federal Rules of Civil Procedure.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this suit may be maintained as a plaintiff and defendant class action.

The plaintiff class is defined as all persons who now have or may have their property attached upon a creditor's allegation of fraudulent conduct pursuant to the Illinois Attachment Act, Ill. Rev. Stat. ch. 11, §1 parts sixth through ninth.

The defendant classes are defined as follows: all clerks of the circuit courts for the judicial circuits of Illinois; all county sheriffs of Illinois.

Enter:

/s/ ALFRED Y. KIRKLAND,
ALFRED Y. KIRKLAND
U. S. District Court Judge

Date: October 31, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUAN HERNANDEZ and MARIA HERNANDEZ, individually and on behalf of all other persons similarly situated,

Plaintiffs,

v.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, RICHARD J. ELROD, Sheriff of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, JAMES TRAINOR, Acting Director of the Illinois Department of Public Aid, individually and in his official capacity, and VIVIAN O'MALLEY, individually and as agent of the Illinois Department of Public Aid,

Defendants.

No. 74 C 3473

ORDER

In accordance with this Court's memorandum opinion, the Court enters judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure as follows:

1. Illinois Revised Statutes, Chapter 11, Sections 1, 2, 2a, 6, 8, 10 and 14 are on their face patently violative of

the due process clause of the Fourteenth Amendment to the United States Constitution.

2. Defendants Finley and Elrod are ordered to cause release of all property of plaintiffs Juan and Maria Hernandez attached pursuant to writ of attachment.

3. Defendant Finley and all other clerks for the judicial circuits of Illinois, their successors, agents and employees are hereby enjoined from issuing writs of attachment pursuant to the Illinois Attachment Act, Illinois Revised Statutes, Ch. 11 §1, subsections sixth through ninth.

4. Defendant Elrod and all other county sheriffs of the State of Illinois, their successors, agents and employees are hereby enjoined from executing writs of attachment pursuant to the Illinois Attachment Act, Illinois Revised Statutes, Ch. 11 §1, subsections sixth through ninth.

5. Defendants Trainor and O'Malley are hereby enjoined from authorizing and processing applications for writs of attachment pursuant to the Illinois Attachment Act, Illinois Revised Statutes, Ch. 11, §1, subsections sixth through ninth.

6. Defendants Finley and Elrod, all other clerks of the judicial circuits of Illinois, and all other county sheriffs of Illinois, are ordered to cause release of any property currently attached pursuant to the Illinois Attachment Act, Illinois Revised Statutes, Ch. 11, §1, subsections sixth through ninth, and give notice of such release to all persons whose property is the object of such attachments.

7. The question of plaintiffs' entitlement to money damages is remanded for determination to Judge Kirkland, the Judge to whom this case was originally assigned.

ENTER:

/s/ WILBUR F. PELL, JR.,
WILBUR F. PELL, JR.,
U.S. Circuit Court Judge

/s/ JOEL M. FLAUM,
JOEL M. FLAUM
U.S. District Court Judge

/s/ ALFRED Y. KIRKLAND,
ALFRED Y. KIRKLAND
U.S. District Court Judge

DATED: Dec. 15, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUAN HERNANDEZ and MARIA HERNANDEZ, individually and on behalf of all other persons similarly situated,

Plaintiffs,

v.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, RICHARD J. ELROD, Sheriff of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, JAMES TRAINOR, Acting Director of the Illinois Department of Public Aid, individually and in his official capacity, and VIVIAN O'MALLEY, individually and as agent of the Illinois Department of Public Aid,

Defendants.

No. 74 C 3473

Before PELL, Circuit Judge, FLAUM and KIRKLAND, District Judges.

KIRKLAND, District Judge. This matter comes before the Court on motion of defendants to dismiss the complaint for failure to state a claim upon which relief could be granted. Plaintiffs have cross-filed for summary judgment on entitlement to declaratory and injunctive relief. Further,

on instruction by the Court, the parties briefed the issue of whether, in light of *Huffman* v. *Pursue Ltd.*, —— U.S. ——, 95 S. Ct. 1200 (1975), this Court should enjoin a pending state attachment proceeding against plaintiffs prior to exhaustion of state judicial remedies.

The Illinois Department of Public Aid ("IDPA") filed suit in Circuit Court of Cook County, Illinois, on October 30, 1974, alleging that plaintiffs had fraudulently concealed the existence of monies while applying for and receiving public aid assistance. Simultaneous with filing of this suit, IDPA filed an attachment complaint which resulted in attachment of plaintiffs' funds in a credit union on November 5, 1974. After answering the complaint and filing their appearance, plaintiffs filed the instant complaint in federal court challenging the constitutionality of the Illinois Attachment Act and seeking declaratory, injunctive and other relief.

Jurisdiction is alleged under 28 U.S.C. §1343 (3) and (4) and 42 U.S.C. §1983. The complaint challenges the constitutionality of the Illinois Attachment Act, Ch. 11 §§1, 2, 2a, 6, 8, 10, and 14. The Act is alleged to be unconstitutional both on its face and as applied on grounds that it violates the due process clause of the Fourteenth Amendment to the United States Constitution.

Two issues are presented to this Court for decision: (1) does *Huffman* v. *Pursue Ltd., supra,* prevent this Court from intervening in a state civil proceeding filed pursuant to a state statute alleged to be unconstitutional; and (2) if the preceding question is answered in the negative, are the challenged portions of the Illinois Attachment Act unconstitutional?

I. MUST FEDERAL ACTION BE RESTRAINED PENDING EXHAUSTION OF STATE REMEDIES?

The Supreme Court in *Huffman* extended for the first time the doctrine of non-interference with state criminal proceedings, articulated in *Younger* v. *Harris,* 401 U.S. 37 (1971), to a civil proceeding. The remedy presently sought by plaintiffs would require this Court to enjoin a state court civil proceeding; hence we are constrained at the outset to examine the applicability of *Huffman* prior to any consideration of the merits of this case.

The only obstacle to reaching the merits of this case would be a determination that the principles articulated in *Huffman* apply here.

It is clear that this Court is empowered to enjoin state action under certain circumstances, notwithstanding the general prohibition against such injunctions found in 28 U.S.C. §2283. *Mitchum* v. *Foster,* 407 U.S. 225 (1972), held that the anti-injunction rule of Section 2283 does not apply to civil rights actions under 42 U.S.C. §1983. Likewise, if the Illinois attachment proceeding were determined not to be "proceedings in a state court", the anti-injunction statute by its own terms would not apply. This Court holds the challenged attachment proceeding to be a pending proceeding within the meaning of Section 2283.

The *Huffman* case arose out of an attempt by the State of Ohio to close a theatre which showed allegedly obscene films, on grounds that the theatre was creating a public nuisance. The state proceeded under the Ohio nuisance statute, which defined a place exhibiting obscene films as a nuisance. The Ohio Court determined in an adversary proceeding that the films were obscene and immediately ordered that the theatre be closed. Following this decision, and without exhausting state appellate procedure, the theatre operator filed suit in federal court. A three-judge district court held that closing of the theatre by the Ohio

State Court was violative of the plaintiff operator's constitutional rights because the films had not been declared obscene prior to their exhibition. The plaintiff operator had not exhibited any films after the determination that said films were obscene.

The Supreme Court vacated the order of the three-judge court on grounds of equity, comity, and federalism, holding that the principles of *Younger* v. *Harris, supra.,* were applicable even though the state proceeding was civil in nature.

The *Younger* decisi gave approval to long-standing policy that federal courts should not interfere with state criminal proceedings except in extraordinary circumstances. See *Fenner* v. *Boykin,* 271 U.S. 240 (1926); *Spielman Motor Sales Co.* v. *Dodge,* 295 U.S. 89 (1935); *Stefanelli* v. *Minard,* 342 U.S. 117 (1951). *Younger* specifically held that federal injunctive relief should not be employed against state criminal prosecutions except: (1) upon a showing of "irreparable injury" that is both "great and immediate"; or (2) where the statute in question is "flagrantly and patently violative of express constitutional prohibitions". 401 U.S. at 53.

The decision in *Huffman* is significant in that it represents the first extension of these principles to non-criminal proceedings. In extending this doctrine, the Court stated that action of the State of Ohio was more akin to criminal proceedings than most civil cases. 95 S.Ct. 1208. This Court is of the opinion, however, that *Huffman* v. *Pursue Ltd.* is not applicable here for two reasons.

First, the rule of *Younger* was established for, and has been limited in application to, criminal proceedings. The Court's principal justification for extension of the *Younger* doctrine in *Huffman* was that Ohio's civil proceeding was

"in aid of and closely related to criminal statutes". 95 S. Ct. 1208. In *Huffman,* the State of Ohio proceeded under a statute which gave an exclusive right of action to the state. By contrast, the Illinois Attachment Act provides a cause of action for any person, public or private. It is mere happenstance that the State of Illinois was the petitioner in this attachment proceeding. It is likewise coincidental that the pending state proceedings may arguably be quasi-criminal in nature; under the Illinois Attachment Act, they need not be. These major distinctions preclude this Court from extending the principles of *Younger,* based on considerations of equity, comity and federalism, beyond the quasi-criminal situation set forth in *Huffman.*

Second, an express exception to the *Younger* rule of non-interference in state criminal proceedings exists where the challenged statute is patently and flagrantly violative of the constitution. This Court is of the opinion that the present case falls within that exception, for reasons hereinafter set forth.

II. IS THE ILLINOIS ATTACHMENT ACT UNCONSTITUTIONAL?

Four recent Supreme Court cases are controlling authority in an analysis of constitutional validity of summary creditor remedies. These cases include *Sniadach* v. *Family Finance Corp.,* 397 U.S. 254 (1969), *Fuentes* v. *Shevin,* 407 U.S. 67 (1972); *Mitchell* v. *W.T. Grant Co.,* 416 U.S. 600 (1974); and *North Georgia Finishing Inc.* v. *Di-Chem Inc.,* —— U.S. ——, 42 L. Ed. 2d 753 (1975).

In *Sniadach* v. *Family Finance Corp., supra,* the Court held that a Wisconsin pre-judgment garnishment procedure which resulted in garnishment of wages without notice and prior hearing, violated fundamental principles of due process.

In *Fuentes* v. *Shevin, supra,* the Supreme Court examined the replevin acts of Florida and Pennsylvania. Both acts authorized the issuance of pre-judgment writs of replevin through a summary process of *ex parte* application to the court clerk, accompanied by the posting of bond for an amount in excess of the property's value. Neither act provided for notice and prior hearing or an immediate post-seizure hearing. Both acts did permit the respondent to recover his replevied property upon posting of a bond in double the amount of its value. The Court held that procedural due process required that a person in possession of chattels be given an opportunity for a hearing prior to issuance of a writ of replevin. The Court further held that posting of a bond was a minimal deterrent to abusive or even good faith use of the replevin procedure and constituted no substitute for a pre-seizure hearing.

In *Mitchell* v. *W. T. Grant Co., supra,* the Supreme Court carved out an exception to the pre-seizure hearing rule promulgated in *Sniadach* and *Fuentes.* There the Court upheld the validity of a Louisiana sequestration act which authorized sequestration of encumbered property upon *ex parte* application of a creditor without notice to the debtor or opportunity for prior hearing. The Court found, however, that the Louisiana act did provide safeguards not present in those statutes analyzed in *Sniadach* and *Fuentes.*

First, the Louisiana act required the creditor to file an affidavit before a judge, setting forth factual rather than conclusory allegations which entitled the creditor to relief. A writ would only issue by the judge upon the proper showing. Second, and of equal importance, the act expressly entitled the debtor to an immediate post-seizure hearing; a hearing in which the burden was upon the creditor to prove the allegations contained in the affidavit.

The Court found that these provisions sufficiently safeguarded the rights of the debtor to eliminate necessity for prior notice and hearing.

A Georgia garnishment act was examined by the Court in *North Georgia Finishing Inc.* v. *Di-Chem, supra.* The Court determined that Georgia's summary procedure for garnishment satisfied neither the *Sniadach* and *Fuentes* requirement of pre-seizure hearing, nor the alternative judicial safeguards approved in *Mitchell.*

Having briefly summarized the applicable law, the Court now turns to the Illinois statute under constitutional challenge.

The Illinois Attachment Act (Illinois Revised Statutes, Ch. 11, 1973) authorizes a creditor with a money claim, whether liquidated or unliquidated and whether sounding in contract or tort, to attach the assets of an alleged debtor pending outcome of a lawsuit against the debtor on the money claim. The creditor can obtain a writ of attachment prior to filing his complaint against the debtor[1] and prior to the debtor having received notice of impending attachment or an opportunity to be heard on the question of whether the writ should issue.

Section 1 of the Act provides for attachment in any of nine circumstances. Plaintiffs specifically attack four subsections which authorize attachment upon the creditor's allegations of debtor fraud:

> SIXTH: Where the debtor has within 2 years preceding the filing of the affidavit required, fraudulently

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1. Pursuant to §25 of the Act, the complaint must be filed at least ten days before the return date of the writ of attachment.

> conveyed or assigned his effects, or a part thereof, so as to hinder or delay his creditors.
>
> SEVENTH: Where the debtor has, within 2 years prior to the filing of such affidavit, fraudulently concealed or disposed of his property so as to hinder or delay his creditors.[2]
>
> EIGHTH: Where the debtor is about fraudulently to conceal, assign, or otherwise dispose of his property or effects, so as to hinder or delay his creditors.
> NINTH: Where the debt sued for was fraudulently contracted on the part of the debtor. . . . Ill. Rev. Stat., Ch. 11 §1, sixth through ninth.

A creditor will be entitled to a writ of attachment, against an alleged debtor's property, upon the filing of an affidavit by the creditor, or his agent or attorney, which sets forth in verbatim statutory language one of the above allegations, along with the nature and amount of the claim and the name and place of residence of the debtor. Upon filing of this affidavit and the required bond with the clerk of the circuit court, the clerk issues a writ of attachment directing the sheriff to serve it upon the debtor, or another person holding the debtor's property.

If the action sounds in tort, under Section 2 of the Act the creditor must apply to a judge of the circuit court. The judge, after questioning the creditor concerning the cause of action, endorses upon the affidavit the amount of damages for which the writ shall issue. Upon service of the writ, the sheriff takes and retains custody of the property attached or directs a third party in possession to withhold the attached property from the debtor.

---

2. This is the sole allegation of fraud set forth in the affidavit of Defendant O'Malley upon which the writ of attachment was issued.

The debtor may obtain release of his property prior to trial on the merits of the creditor's claim in two ways. First, the debtor can file a bond in double the value of the property attached, upon the condition that said property will be available for execution should judgment be rendered against him. Alternatively, he can file a bond in a sum sufficient to cover the amount of debt or damages alleged plus costs of suit.

Second, Section 27 of the Act provides that defendant debtor may answer by affidavit, denying the allegations set forth in the creditor's attachment affidavit; and if the court finds for defendant after trial on the merits of the attachment, the writ will be quashed. This section, however, does not give defendant an absolute right to a hearing on the attachment issue immediately after seizure.

The debtor whose property has been attached is thereby deprived of the use of his property from the date the writ is served until an uncertain future time when he receives a hearing on the attachment issue. Even if the debtor should seek a separate hearing thereon on the return date, the debtor can be deprived of his property for a period of sixty days, since Section 6 of the Act provides that the creditor shall set the return date from ten to sixty days after date of the writ.

It is clear on its face that the Illinois Attachment Act does not meet the due process standards established by the Supreme Court in the cases previously discussed.

The Illinois Act does not provide for pre-seizure hearing as required by *Fuentes*. Because of *Mitchell* v. *W. T. Grant Co., supra,* however, this Court does not hold that pre-seizure hearing is any longer an absolute requirement. However, neither does the Act provide the alternative safeguards approved by *Mitchell*. Specifically, the Illinois Act

does not require the attachment creditor to set out facts in his affidavit which would entitle him to relief. The Act does not require the complainant to present such affidavit to a judge for determination of whether a writ should issue. Instead, the Act provides that upon conclusory allegations in verbatim statutory language, coupled with certain procedural information, a writ will automatically issue from the clerk of the court.

The provision for judicial review in tort cases is limited only to the question of potential damages and determination of limit on the amount of property to be attached. The judge is not required to evaluate the legal sufficiency of sworn facts as was the case in *Mitchell*.

Neither does the Act provide for an *immediate* post-seizure hearing upon application of the debtor, a hearing in which the attachment creditor bears the burden of proving his entitlement to relief at risk of dissolution of the writ. The Illinois Act merely provides for a post-seizure hearing on application by the debtor at a time to be set at the convenience of the Court. The Court, therefore, is under no duty to set an immediate hearing.

For these reasons, this Court holds that the Illinois Attachment Act is on its face patently violative of the due process clause of the Fourteenth Amendment to the United States Constitution.

Plaintiffs are entitled to injunctive relief against defendants. Separate order to issue in accordance with this opinion.

December 15, 1975.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption and portion of order setting briefing schedule omitted]

ORDER ALLOWING DEFENDANTS FINLEY AND ELROD TO ADOPT PLEADINGS

Motion of defendants Finley and Elrod to adopt pleadings and memoranda filed and to be filed by the state defendants is granted.
/s/ Kirkland, J.

January 30, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed February 3, 1976

JUAN HERNANDEZ, et al.,
Plaintiff-Appellees,
vs.
MORGAN M. FINLEY, et al.,
Defendants-Appellants.
Civil Action No. 74 C 3473

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that James Trainor and Vivian O'Malley, defendants herein, hereby appeal to the Supreme Court of the United States from the final judgment entered in this action on the 15th day of December, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1253.

WILLIAM J. SCOTT
Attorney General
State of Illinois
By: /s/ PAUL J. BARGIEL,
PAUL J. BARGIEL
Assistant Attorney General
160 North LaSalle Street,
Suite 800
Chicago, Illinois 60601
(793-5635)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed February 10, 1976

JUAN HERNANDEZ, et al.,
Plaintiffs,
vs.
MORGAN M. FINLEY, et al.,
Defendants.
No. 74 C 3473

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

PLEASE TAKE NOTICE that defendants Morgan M. Finley and Richard J. Elrod hereby appeal to the United States Supreme Court from the final judgment entered on December 15, 1975 in this cause.

This appeal is taken pursuant to 28 U.S.C. 1253.

BERNARD CAREY
State's Attorney of Cook County

By: /s/ JOHN A. DIENNER, III
JOHN A. DIENNER, III

Assistant State's Attorney
500 Chicago Civic Center
Chicago, Illinois 60602
443-7940

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing]

ORDER

This matter comes before the Court on motion of all defendants to stay the injunction entered by this Court on December 15, 1975, pending appeal to the United States Supreme Court.

In order to gain a stay of injunction pending appeal, the movant must demonstrate: (1) a strong likelihood that movant will prevail on the merits; (2) irreparable injury to the movant in the absence of a stay; (3) lack of substantial harm to other parties to the litigation; and (4) public interest will be served by entry of a stay. *Virginia Petroleum Jobbers Assn.* v. *Federal Power Commission*, 259 F. 2d 921 (D.C. Cir. 1958); *In Re Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Belcher* v. *Birmingham Trust National Bank*, 395 F. 2d 685 (5th Cir. 1968).

Defendants have not persuaded this Court that the aforesaid requirements have been satisfied.

Accordingly, the motion for a stay is denied.

WILBUR F. PELL, JR.,
U.S. CIRCUIT COURT JUDGE

/s/ JOEL M. FLAUM,
JOEL M. FLAUM,
U.S. DISTRICT COURT JUDGE

/s/ ALFRED Y. KIRKLAND,
ALFRED Y. KIRKLAND,
U.S. DISTRICT COURT JUDGE

DATED: February 25, 1976

This order has not been signed by Judge Pell who would have granted a stay. 2/25/76 /s/ William F. Pell, Jr.

SUPREME COURT OF THE UNITED STATES

No. 75-1407

James Trainor. etc.. et al.,

Appellants.

v.

Juan Hernandez, et al. etc.

Appellants.

APPEAL from the United States District Court for the Northern District of Illinois. The Motion of the Appellees for leave to proceed *in forma pauperis* is granted. In this case probable jurisdiction is noted.

June 7, 1976

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Filed June 22, 1976

[Caption omitted in printing]

MOTION TO DISMISS APPEAL OF DEFENDANTS FINLEY AND ELROD

The plaintiffs, by their attorney, move this Court to dismiss the appeal of defendants Finley and Elrod to the United States Supreme Court from the judgment entered in this cause of December 15, 1975. In support thereof, plaintiffs state as follows:

1. On December 15, 1975, this Court granted the plaintiffs the declaratory and injunctive relief requested in their complaint.

2. On February 10, 1976, defendants Finley and Elrod filed a notice of appeal to the Supreme Court of the United States. However, said defendants have not docketed their appeal in the United States Supreme Court by filing a Jurisdictional Statement within 60 days of their notice of appeal as required by Supreme Court Rule 13(2). See *Shapiro* v. *Doe,* 396 U.S. 488 (1970).

3. Rule 14(2) of the United States Supreme Court provides in pertinent part

. . . if a notice of appeal has been filed but the case has not been docketed in this Court within the time for docketing, the court possessed of the record may dismiss the appeal upon motion of the appellee and notice to the appellant . . .

4. The record in this cause remains in the possession of the district court.

WHEREFORE, plaintiffs pray that this Court dismiss the appeal of defendants Finley and Elrod.

Respectfully submitted,

/s/ Fred L. Lieb,

Counsel for Plaintiffs

[Name and address of counsel omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

ORDER

In view of the questionable jurisdictional basis for this motion and in view of the fact that the issue raised by this motion may properly be presented to the Supreme Court, this Court declines to rule upon plaintiffs' motion to dismiss the County defendants' appeal.

ENTER:

/s/ WILBUR F. PELL, JR.,
WILBUR F. PELL, JR.,
U.S. Circuit Court Judge

/s/ JOEL M. FLAUM,
JOEL M. FLAUM
U.S. District Court Judge

/s/ ALFRED Y. KIRKLAND,
ALFRED Y. KIRKLAND
U.S. District Court Judge

DATED: June 30, 1976